

## MESSAGE

OF

### THE PRESIDENT OF THE UNITED STATES,

COMMUNICATING,

*In compliance with a resolution of the Senate of the 2d instant, copies of the correspondence between the governments of the United States and the Netherlands, relative to the refusal of that government to allow its diplomatic agents to testify in the criminal courts of the United States.*

JANUARY 7, 1857.—Read, ordered to lie on the table and be printed.

*To the Senate of the United States:*

I transmit a report from the Secretary of State, with accompanying papers, in answer to the resolution of the Senate of the 2d instant.

FRANKLIN PIERCE.

WASHINGTON, *January 6, 1857.*

DEPARTMENT OF STATE,  
*Washington, January 6, 1857.*

The Secretary of State, to whom was referred the resolution of the Senate of the 2d instant, requesting the President to communicate to that body, if not incompatible with the public interest, “copies of all correspondence between the governments of the United States and the Netherlands, in relation to the refusal of diplomatic agents of the latter government to appear before courts of justice of the United States, and give testimony in criminal cases of facts bearing thereon, of which they may be cognizant,” has the honor to lay before the President the papers mentioned in the subjoined list.

All which is respectfully submitted.

W. L. MARCY.

To the PRESIDENT OF THE UNITED STATES.

#### *List of accompanying papers.*

Mr. Key to Mr. Marcy, May 9, 1856—copy.

Mr. Marcy to Mr. Dubois, May 9, 1856—copy.

Mr. Marcy to Mr. Key, May 9, 1856—copy.

Mr. Dubois to Mr. Marcy, May 9, 1856—translation.  
 The same to the same, May 11, 1856—translation.  
 Mr. Marcy to Mr. Key, May 13, 1856—copy.  
 Mr. Dubois to Mr. Marcy, May 15, 1856—translation.  
 Mr. Marcy to Mr. Belmont, May 15, 1856—copy.  
 Mr. Belmont to Mr. Marcy, with inclosures, June 10, 1856—copy.  
 Mr. Dubois to Mr. Marcy, June 21, 1856—translation.  
 Mr. Marcy to Mr. Dubois, June 25, 1856—copy.  
 Mr. Marcy to Mr. Key, June 25, 1856—copy.  
 Mr. Key to Mr. Marcy, June 27, 1856—copy.  
 Mr. Marcy to Mr. Dubois, June 30, 1856—copy.

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*Mr. Key to Mr. Marcy.*

OFFICE OF U. S. ATTORNEY FOR THE DISTRICT OF COLUMBIA,  
 May 9, 1856.

SIR: The preliminary examination of the Hon. P. T. Herbert, who is charged with killing one Thomas Keating, is now proceeding before two justices of the peace for this District. It is represented to me that the testimony of Mr. Henry Dubois, minister from the Netherlands, is most important; and inasmuch as he is exempt from the ordinary process to compel the attendance of witnesses, I deem it my duty to lay this information before you, that you may take such measures to obtain the testimony of this gentleman for the United States as you may think proper.

I have the honor to be your obedient servant,  
 PHIL. BARTON KEY,  
 U. S. Attorney.

Hon. WILLIAM L. MARCY, &c., &c., &c.

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*Mr. Marcy to Mr. Dubois.*

DEPARTMENT OF STATE,  
 Washington, May 9, 1856.

SIR: I have received a letter from Mr. Key, the attorney of the United States for this District, in which he represents that your testimony is important in the investigation of a charge against Philemon T. Herbert for killing Thomas Keating. If you should have no objection to further the ends of justice by giving your testimony in this case, Mr. Key will call for you in a carriage at Willard's, at half past four o'clock this evening, and will accompany you to the place where the examination is to be continued. An answer as prompt as may be convenient is desired.

I avail myself of this occasion, sir, to offer to you a renewed assurance of my very high consideration.

W. L. MARCY.

HENRY C. DUBOIS, &c., &c., &c.

*Mr. Marcy to Mr. Key.*

DEPARTMENT OF STATE,  
*Washington, May 9, 1856.*

SIR: I have to inform you that, pursuant to the request contained in your note of this date, I have addressed an invitation to Mr. Dubois, the minister of the Netherlands, to appear as a witness against Mr. Herbert, and have had an interview with him on the subject, but he declines for the present to accede to my request. He deems it necessary, before making up his mind, to consult the other members of the diplomatic body. It is not probable that he will be able to do this before to-morrow or next day.

I am, sir, your very obedient servant,

W. L. MARCY.

P. BARTON, KEY, Esq.,  
*Washington.*

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*Mr. H. C. Dubois to Mr. Marcy.*

[Translation.]

WASHINGTON, *May 11, 1856.*  
[*Sent May 12, 1856.*]

MR. SECRETARY OF STATE: I had the honor verbally to state to you, yesterday, that, after consulting all the ministers, my colleagues, as I had intimated to you it was my intention to do, upon your apprising me that one of them had, some years ago, appeared before a court here, it was my duty to persist, in the most positive manner, in my refusal, communicated to you on the preceding day, to come before the court in the pending case.

This refusal is, as you, Mr. Secretary, well know, grounded on international law; but it is also grounded on the Constitution of the United States, and on a special law of your enactments.

Those who desire to satisfy themselves as to the usefulness and necessity of the stipulations which these commentaries of high legislation contain in this connexion, have but to peruse the discussions which preceded them, and to consult the works of your most eminent statesmen and publicists—such as Wheaton, Kent, and Elliott. There they will find the reasons for a decision which is sustained by the *unanimous* advice of my colleagues.

I no more believe than I fear, that this decision, growing out of the purest motives, can and should expose me, as well as my colleagues, to general condemnation in this country, and so far damage my future standing as to exclude me from social intercourse with its inhabitants—as entirely to baffle my useful exertions in behalf of my country, and consequently to compel me to leave the soil, as it is pretended in the anonymous letter which I received this morning, and

which I have the honor to enclose, with the request that it may, after perusal, be returned to me.

I entertain, Mr. Secretary, too exalted an idea of the enlightened sense and equitable spirit of the American people ever to believe that they can condemn a strict adherence to international, and even to American laws, however painful to me under present circumstances, and to a decision similar to that made several years ago by an American minister in England, the Hon. Mr. Everett, who equally refused to give testimony under oath.

The American people themselves profess too much respect for the laws, and possess too much common sense, not to understand that such a condemnation would recoil as a self-inflicted injury.

The single object of these lines is to beg of you to communicate them as early as possible, together with those which preceded them the day before yesterday, to the district attorney and the court, with the view, compelled as I am, by my official character, to yield to other considerations of a higher interest, of testifying to those gentlemen the respect which I entertain for their legal character, and regrets at my inability to defer to their wishes, as well as my disposition to further their inquiry so far as it lies in my power.

The anonymous writer will find in this communication an answer to his letter, for which he has my thanks, suggested, as he says, by friendship; generally speaking, however, I own a preference for subscribing correspondents; yet as we can never number too many friends, I freely accept its author as an unknown friend, until I can be gratified by the pleasure of a personal acquaintance.

Be pleased to accept, Mr. Secretary of State, the renewed assurance of my high consideration.

H. C. DUBOIS.

Hon. Mr. MARCY,

*Secretary of State of the United States,  
Washington.*

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*Mr. Marcy to Mr. Key.*

DEPARTMENT OF STATE,

*Washington, May 13, 1856.*

SIR: I have received a definite answer to the invitation which I addressed to Mr. Dubois, the minister of the Netherlands, inviting him to appear as a witness in the case of the complaint against Philemon T. Herbert for killing Thomas Keating. Mr. Dubois declines complying with the invitation.

I am your very obedient servant,

W. L. MARCY.

P. BARTON KEY, Esq.,

*Attorney of the United States for the District of Columbia.*

*Mr. Dubois to Mr. Marcy.*

[Translation.]

WASHINGTON, *May 15, 1856.*

MR. SECRETARY OF STATE: I have just received, enclosed under cover to this legation, a copy of the New York "Courier and Inquirer" of yesterday, No. 7913, containing a long article on the subject of the homicide lately committed in this city, which I had the misfortune to witness.

As I am not a subscriber to that journal, and inasmuch as the article aforesaid criticises my conduct in that affair, which it severely condemns, under the same point of view as the anonymous letter which was addressed to me some days ago, and which I had the honor of transmitting to you, I must suppose that it originates, if not from the same pen, at least, that it has been prompted by the author of said letter, and the latter having sent it to me through friendship for me. I must the more regret that he is so badly informed in regard to my conduct.

Now, you will easily understand that it is not my province to correct the errors of said article, and to enter into a newspaper controversy, no more than to pay greater attention to anonymous letters than they seem to deserve; but you will understand, at the same time, how painful it must be to me to be misjudged, and to be misrepresented in public opinion, in a country for which, on my arrival here, I entertained the highest and most sincere regard—a regard which I should greatly regret to lose. Being then unable to defend myself through the medium of the press, I think it is the duty of your government to do so, by correcting the errors which mislead it, and which cause it to pronounce a wrong opinion, so far as I am concerned, of that lamentable occurrence, and I am confident that said government will find the means to do so.

So trusting, I have the honor to renew to you, Mr. Secretary of State, the assurance of my high consideration.

H. C. DUBOIS.

Hon. WM. L. MARCY,

*Secretary of State of the United States, Washington.*

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*Mr. Dubois to Mr. Marcy.*

[Translation.]

WASHINGTON, *May 9, 1856.*

MR. SECRETARY OF STATE: Your letter of this day has just been handed to me, and I answer it at once.

I was, in fact, a witness of the sad occurrence which you mention in your letter, and even the *only impartial witness*, from its beginning to its conclusion; for, with the exception of Mr. Herbert and Mr. Gardiner, his friend, there was no person in the hall with me except



the comrades of the deceased. I regret this circumstance, because I understand what weight it gives to my testimony and also to my responsibility.

Nevertheless, I should have no objection to testify to the truth, and to tell all I have seen and heard, if my position, as the representative of my sovereign, did not prevent me from appearing in a court of law. I find myself obliged, therefore, very much against my wish, to decline the invitation which you have been pleased to address me to that effect. I am, however, ready to go to the State Department at any day and hour which may suit your convenience, and to give you there all the details which you may desire to know, relative to the lamentable occurrence in question, leaving you at entire liberty to have all such persons whose presence you might deem useful or necessary to witness our interview.

Be pleased to accept, in the meanwhile, Mr. Secretary of State, the renewed assurance of my high consideration.

H. C. DUBOIS.

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*Mr. Marcy to Mr. Belmont.*

DEPARTMENT OF STATE,

*Washington, May 15, 1856.*

SIR: I regret to be under the necessity of requesting you to invite the attention of Mr. Van Hall, minister of foreign affairs, to the course of Mr. Dubois, resident minister near this government, in regard to a melancholy affair which he witnessed in a public hotel in Washington a few days ago.

It will be sufficient for my present purpose to state, that while he was at breakfast in the public dining-room of the hotel, a difficulty arose between a member of Congress and one of the waiters of the hotel, and a personal conflict ensued between these parties, which resulted in the death of the waiter from a pistol shot fired by the member of Congress. He appeared before the magistrates for the purpose of a judicial investigation, and the district attorney, charged with the public prosecution of the offence, invited Mr. Dubois to attend the court and give his testimony in the case. This he declined to do, and the influence of this department was invoked to induce him to waive his privilege, under the law of nations, and appear as a witness. I have most cheerfully complied with the request of the district attorney, and have earnestly endeavored to convince Mr. Dubois that he would not only contribute largely to the administration of justice by attending, but increase his claims upon the good will of this community and greatly augment his means of usefulness to his government. I regret that he has not been able to view the matter in the light in which I have presented it to him. This, perhaps, ought not to create surprise, as he has but lately arrived in the country and is an entire stranger among us, and, in his embarrassment, it is not unreasonable that he should have consulted his colleagues in the diplomatic corps. It is understood that they have advised him to persist in his refusal

to appear before the court. It is not doubted that, both by the usage of nations and the laws of the United States, Mr. Dubois has the legal right to decline to give his testimony, but he is at perfect liberty to exercise this privilege to the extent requested, and by doing so he does not subject himself to the jurisdiction of the country. The circumstances of this case are such as to appeal strongly to the universal sense of justice. Mr. Dubois was, it is believed, the only unprejudiced person who witnessed the whole affair, and it is not probable that justice can be done in the case without his evidence. If the accused acted in self defence as is alleged, he is innocent of the crime charged, and there is a high moral obligation upon Mr. Dubois to contribute his testimony to establish the fact. But if, on the contrary, he is guilty, the claims of justice are not less imperative, and they are, besides, augmented by the interest of the whole community.

These considerations have not had that influence upon Mr. Dubois to which they are believed to be entitled, and I hope they may prove to be more convincing to the mind of Mr. Van Hall. In the event of his suggesting that Mr. Dubois might give his deposition out of court in the case, you will not omit to state that by our Constitution, in all criminal prosecutions, the accused has the right to be confronted with the witnesses against him, and hence, in order that the testimony should be legal, it must be given before the court.

I am, sir, respectfully, your obedient servant,

W. L. MARCY.

AUGUST BELMONT, Esq., *Hague*.

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*Mr. Belmont to Mr. Marcy.*

[No. 87.]

LEGATION OF THE UNITED STATES,  
*The Hague, June 10, 1856.*

SIR: On the receipt of your despatch of 15th of last month, (No. 37,) I lost no time in communicating its contents to Mr. Van Hall, accompanied by a note of mine, of which you will please find a copy annexed.

In order to show the importance which the President attaches to this matter, I sought, the following day, an interview with the minister. He informed me then, that previous to the receipt of my note he had been placed in possession of all the facts of the case by Mr. Dubois himself, who, at the same time, had informed him of his readiness to testify before you to the scene of which he was a witness, and that even under oath, if authorized to do so by his government. Mr. Van Hall had, after having taken the orders of the King, fully approved of the conduct of Mr. Dubois, and in order to evince his earnest desire to comply, as far as lay in his power, with your request, had authorized him to testify, under oath, at your department, in presence of such magistrates and other persons as you might think proper to convoke. The character of Mr. Dubois, as representative of

his royal master, would, however, on no account, admit of his appearing in court as an ordinary witness, and of his being subjected to a vexatious cross-examination.

I tried in vain, during an hour's consideration, to make Mr. Van Hall recede from the position which he had taken, telling him that by the proceedings prescribed by the Constitution of the United States in criminal prosecutions, any concession of Mr. Dubois, short of his willingness to testify in open court, and to be confronted with the accused, would not be of the slightest avail, as his evidence would only be admissible on such conditions. I represented to him the vital importance of the case, and the sacred obligations it imposed upon Mr. Dubois, whose testimony, as perhaps the only unprejudiced witness throughout the whole disgraceful scene, might prove indispensable either to save the life of a fellow being, or to avenge the offended majesty of the law.

My representations and arguments proved fruitless before the determined resistance of the minister, who promised, on leaving him, to give me, at a very early day, an official reply to my note. As he had during our discussions appeared very reluctant to be convinced by my statements that the evidence of Mr. Dubois, in the way he was willing to allow it to be offered, could, under our laws, not be admitted in court, I availed myself of this circumstance to address him, next morning, another note, without waiting for the reply to my first communication. In this note, of which I beg to hand you a copy enclosed, I sent him an extract of our Constitution referring to criminal prosecutions, and tried again to impress upon him, in the most urgent and earnest manner, the high moral obligation which the circumstances imposed upon Mr. Dubois to comply with your request.

This communication was not received, or its receipt was ignored by the minister, at the time that he sent me, under yesterday's date, the reply to my first note, of which you will please find the annexed copy. Its contents confirm the unwillingness of Mr. Van Hall to modify, in any way, the instructions which he had, before the receipt of your despatch, already sent out to his minister resident.

I have seen him again this morning, when he told me that he would take an early opportunity to reply to my second note, but that he was sorry to be compelled to inform me that he had not been able to bring himself to view the question in a different light from what he had done. His next note, which his other engagements may retard for some days, will therefore contain the same unqualified refusal to allow Mr. Dubois' cross-examination, which he has given in his note of yesterday.

I regret extremely that my efforts have not been crowned by a better success, and remain, most respectfully,

Your very obedient servant,

AUGUST BELMONT.

Hon. W. L. MARCY,  
*Secretary of State, Washington.*



*Mr. Belmont to Baron Van Hall.*

LEGATION OF THE UNITED STATES,  
*The Hague, June 7, 1856.*

SIR: I have the honor to communicate herewith to your excellency copy of a despatch received from my government, in relation to an event the unfortunate circumstances of which have already come to your knowledge by the public prints.

The good offices of your excellency are most earnestly solicited by my government, in order to suggest to his Majesty's minister resident at Washington the propriety of giving his testimony before court in a case of such vital importance as the one in question. It is generally understood that Mr. Dubois was the only unprejudiced person present at the enactment of this sad tragedy; and, should he be permitted to persist in refusing to give his evidence, it is more than probable that the ends of justice may be frustrated in a matter of life and death. Under such circumstances I deem it unnecessary to add any other argument, in order to convince your excellency of the propriety of the course which my government has in vain induced Mr. Dubois to adopt; persuaded, as I am, that your high sense of justice and humanity will prompt you to comply with the request of my government, by giving the desired instructions to your minister at Washington.

I beg only to observe to your excellency, that by the laws of the United States evidence in criminal prosecutions, in order to be legal, has to be given before the court by the witness in person; if you feel, therefore, induced to instruct Mr. Dubois to waive his diplomatic privileges in this instance I trust that you will suggest to him the necessity of doing so in accordance with the rules of criminal prosecution in the United States.

I have the honor, &c.,

AUGUST BELMONT.

His Excellency BARON VAN HALL,  
*Minister of Foreign Affairs, &c., &c., &c.*

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*Mr. Belmont to Baron Van Hall.*

LEGATION OF THE UNITED STATES,  
*The Hague, June 9, 1856.*

SIR: With reference to our conversation of yesterday, I beg leave now to bring to your excellency's knowledge the following article of the Constitution of the United States relative to the proceedings in criminal cases.

"In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district

shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence."

It is by this fundamental law of the United States that it would become necessary for Mr. Dubois, if he is really desirous to comply with the earnest solicitation of my government, that he consent, by waiving his diplomatic privileges, to appear in court for the delivery of his testimony, and to be confronted with the prisoner on trial.

You were kind enough to inform me, verbally, that previous to the receipt of my last note, you had, in consequence of communications from your minister at Washington, authorized him to give his testimony in the case in question, under oath, but on no account to allow himself to be subjected to a cross-examination before court. I thankfully acknowledge the professions of your desire to comply with the request of my government, but, as I had the honor to state to you verbally, have most seriously to regret, that in refusing your sanction to Mr. Dubois giving his testimony in accordance with the forms required by our laws, you place an insurmountable barrier to the admission of his evidence in court. It is impossible for me to share your excellency's apprehensions, that in the cross-examination of Mr. Dubois, by the prisoner's counsel, he could be exposed to interrogatories which might compromise his official dignity. The courteous and respectful manner in which his attendance in court has thus far in vain been solicited, first by the district attorney, and then by the Secretary of State himself, is in itself a sufficient guaranty, that both the executive and judiciary of my country would protect his Majesty's representative against any proceedings to which his just susceptibilities could take exception. In the despatch of my government, of which I had the honor to transmit a copy to your excellency, you will have observed the same spirit of deference to the uncontested privileges of Mr. Dubois, and while your good offices are earnestly and courteously solicited for the furtherance of the ends of justice, no censure is expressed at the course which your representative has so far judged proper to adopt.

Mr. Marcy states, explicitly, that in consenting to waive his privileges to the extent requested, Mr. Dubois could not subject himself to the jurisdiction of the country, and it is certain that even in the improbable event of any questions being put to him to which his personal or official dignity could object, he would be at full liberty to refuse to reply to them. In such a refusal he would not only be fully sustained by the court, but his proceeding would also receive the sanction of public opinion.

Mr. Dubois in sacrificing, in this instance, his immunities of a diplomatist to the higher dictates of humanity and justice, would secure for himself and the country he represents the good will and esteem of the whole community. His social relations, as well as his official intercourse and consequent usefulness to his government, would most beneficially feel the favorable influence of such a course.

Your excellency told me, yesterday, that Mr. Dubois' conduct had

been fully approved by the members of the diplomatic corps at Washington. Allow me, however, to observe, in all due deference to the judgment of that body, that they may have viewed this question more from the point of etiquette and privilege of their corps than with a full appreciation of the higher considerations to which it is entitled by its tragical circumstances, and the vital interests which it involves.

Let us, for one moment, suppose that his Majesty's envoy had been a witness to one of the numerous attempts against the life of the sovereign of a mighty empire, the neighbor and ally of the Netherlands, which have taken place under the last and actual reign, and which have filled with equal horror and indignation the well-thinking men of every country and every political creed. If his testimony had, consequently, become important for the prosecution of the criminal, would his refusal to appear in court to testify, in accordance with the laws of the country, have been approved on the plea of his diplomatic privileges by any of the governments, the representatives of which at Washington have now been so ready with their advice and approval? or is it likely that his Majesty's government would have sanctioned such a proceeding? What would have been the official and social position of that functionary with the French court and people in the more than improbable event of such a refusal being made and sanctioned?

Yet, to a person of your excellency's enlightened feelings of humanity and justice, who, before he held the high office of his Majesty's first constitutional adviser, was for many years one of the most distinguished members of the Dutch bar, whose venerable father, even to-day, adorns the presiding bench of one of the highest tribunals of the kingdom, to such a person, I say, it would be worse than needless to observe, that the high moral obligation to aid the ends of justice is not less imperative in this case because the victim moved in the humbler ranks of life. If, on the other hand, the accused, as it is alleged, acted only in self-defence, then Mr. Dubois is equally bound, by every call of humanity and honor, to give the benefit of his testimony to a fellow-being under trial for an offence of so grave a nature. In submitting these considerations most urgently and respectfully to your excellency's earnest consideration, I still cherish the hope that they may induce you to modify your instructions to Mr. Dubois in such a manner as to enable him to comply with the request of my government.

I have the honor, &c.,

AUGUST BELMONT.

His Excellency BARON VON HALL,  
*Minister of Foreign Affairs, &c., &c.*

*Baron Van Hall to Mr. Belmont.*

THE HAGUE, June 9, 1856.

SIR: I have had the honor of receiving your official note of the 7th instant, through which, in enclosing copy of a despatch of Mr. Marcy, you bespeak, in the name of your government, my friendly offices to the end that Mr. Dubois may be authorized to appear before a court of justice in a case of homicide.

Ever anxious to evince the pleasure which the government of the Netherlands takes in acceding to the requests of the United States at its hands, I so much the more regret that it will scarcely be possible to give an additional proof of that disposition under present circumstances.

Availing himself of a prerogative generally conceded to the members of the diplomatic body, and recognized also by the laws of the republic, as adverted to by Mr. Marcy in his abovementioned despatch, Mr. Dubois refused to appear before a court of justice; but being desirous to at once reconcile that prerogative with the requirements of justice, he suggested a middle course of action, and proposed to Mr. Marcy to give his declaration under oath, should he be authorized to that effect by the government of the Netherlands.

After taking the King's orders on the subject, I did not hesitate to give such authority to Mr. Dubois, approving at the same time, and formally, the line of conduct which he pursued on that occasion, convinced as I was that, in reality, the difficulties of a criminal suit to be carried on in America as a common witness, could not comport with the dignity of the character of a minister of the King residing at the seat of government of the republic, nor yet could it do so with the duties of his office.

I beg you, sir, to communicate this answer of mine to Mr. Marcy, flattering myself that he will be pleased to derive from it a conviction that, in the act of authorizing its minister resident at Washington to give his sworn deposition to the Secretary of State, the government of the Netherlands did all that was rationally feasible under the circumstances, and that the government of the United States will appreciate the sentiments of courtesy and friendly disposition which suggested such an authority.

I have the honor, sir, &c.,

VAN HALL.

Mr. BELMONT,

*Minister Resident of the United States of America.*

*Mr. Dubois to Mr. Marcy.*

[Translation.]

WASHINGTON, *June 21, 1856.*

MR. SECRETARY OF STATE: You will bear in mind that whilst, through my letter of the 9th of May last, I declined juridically to appear in the case of a homicide which I had witnessed, still I offered to testify to the truth at the Department of State, in presence of all such persons as you might deem it expedient or necessary to have in attendance, and that, touching your verbal inquiry: whether I would testify under oath, I answered that, although personally I had no objection to do so, I could not however accede to it without authority from my government, an authority, which I subsequently informed you, I had applied for, for the purpose of evincing my desire to be agreeable to you, when I had seen that the matter was to go to the criminal court, for the sessions in June, and that the intervening time might allow me to receive instructions from my government at or about that period.

The morning mail has just brought those instructions to me, and I hasten to communicate their import to you.

That import is, that the minister for the foreign affairs of the Netherlands, after soliciting the orders of the King, authorizes me, on the part of his Majesty, to make my declaration under oath at the Department of State; adding, that it is understood that, on such an occasion, no mention is to be made of a cross-examination, to which I could not subject myself.

His excellency instructs me, in the act of communicating this decision to you, to remark, that it has been taken with the exclusive view of giving to the government of the United States a substantial proof that the government of the Netherlands, although held to no obligation in this matter, and expressly reserving its rights and its freedom of action for the future, is nevertheless, and through good will towards the government of the United States, disposed to do all that is feasible in this peculiar circumstance to assist the judges in their ministry.

You will, therefore, be pleased, Mr. Secretary of State, to inform me whether the American government will accept my declaration in the matter and in the manner after which I am by my government authorized to make it.

In that event, I would be obliged to you could it be so arranged that I might make it during the course of the ensuing week. I am quite ailing in consequence of the heat, and have for the last eight days been under treatment; so that my medical adviser urges a change of air and a trip to the north as speedy as possible.

Be pleased to accept, Mr. Secretary of State, the renewed assurance of my high consideration.

H. C. DUBOIS.

Hon. W. L. MARCY,

*Secretary of State of the United States.*



*Mr. Marcy to Mr. Dubois.*

DEPARTMENT OF STATE,

*Washington, June 25, 1856.*

SIR: I have received your note of the 21st instant, from which it appears that you are authorized by your government to make your declaration, under oath, at the Department of State, as to what you saw in the unfortunate affair at Willard's hotel, some few months ago; but you are not allowed, as I understand you, to submit yourself to a cross-examination.

The President does not doubt that his Majesty the King of the Netherlands is disposed to do all that is feasible to remove obstacles in the way of the administration of criminal justice. I presume, however, that his Majesty was not aware when he fixed the conditions on which your declaration might be made that, under our system of administering law in criminal cases, such a declaration could not be admitted as competent evidence. The accused has a right to have the witnesses against him brought into open court, and to be subjected to a cross-examination. The presence of the witness in court, and the privilege of a full cross-examination can only be waived by the accused. Where the testimony is likely to be against him, he would not, of course, make such waiver.

Your declaration, made in this department under oath, could not be used on the trial of Mr. Herbert, nor could the testimony of any witness be received, even if given in open court, in either a civil or criminal prosecution, if the right of cross-examination was withheld. In this respect, the law of this country is like that of Great Britain, and, I presume, it does not differ from the law of most other countries. The oath administered to the witness lays him under the obligation not only to tell the *truth*, but the *whole truth*. Without a cross-examination the latter might not be obtained, however fair and upright may be the witness. His judgment might err in regard to what facts and circumstances were material or immaterial in the case.

The conditions imposed by your government will, necessarily, deprive the United States of your testimony on the trial in a most important case.

I shall submit your note to the prosecuting attorney of the United States; should he think that any use can be made of your declaration, (taken in the way proposed,) and desire to have it, I will notify you of the fact as soon as I shall receive his reply.

Be pleased to accept, sir, the assurances of my high consideration,  
W. L. MARCY.

H. C. DUBOIS, Esq., &c., &c., &c.

*Mr. Marcy to Mr. Key.*

DEPARTMENT OF STATE,  
*Washington, June 25, 1856.*

SIR: Mr. Dubois, the minister of his Majesty the King of the Netherlands, applied to his government for directions in relation to the application made to him to appear in court as a witness in the prosecution of Mr. Herbert on the charge of murder. He has addressed a note to me containing the reply of his government, a translation of which I herewith send to you. If you think it advisable to take the declaration of Mr. Dubois in the way proposed, I will make the necessary arrangement for having it done.

I have expressed to him my opinion that no use whatever could be made of such a declaration. Should you think otherwise, I will notify him, and will arrange with you the time of taking it. As Mr. Dubois wishes to leave the city, I hope soon to hear from you on the subject.

I am, respectfully, your obedient servant,

W. L. MARCY.

P. B. KEY, Esq., *United States Attorney, Washington.*

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*Mr. Key to Mr. Marcy.*

OFFICE OF THE UNITED STATES ATTORNEY  
FOR THE DISTRICT OF COLUMBIA, *June 27, 1856.*

SIR: I have the honor to acknowledge the receipt of your communication of the 26th instant, and beg to say that the declaration, such as Mr. Dubois proposes to make, would not be admitted as evidence on the trial of P. Herbert.

Most respectfully,

PHIL. BARTON KEY,  
*United States Attorney.*

Hon. W. L. MARCY.

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*Mr. Marcy to Mr. Dubois.*

DEPARTMENT OF STATE,  
*Washington, June 30, 1856.*

SIR: I have received a note from the United States attorney for this District, who concurs in the opinion which I have expressed to you, that such a declaration as you offer to make could not be used as evidence on the trial of Mr. Herbert. He does not, therefore, propose to have it made. There is no occasion, therefore, for you to remain here for the purpose of having that declaration taken.

I avail myself of this occasion to offer to you a renewed assurance of my high consideration.

W. L. MARCY.

Mr. H. C. DUBOIS, &c., &c., &c.

